

CCRB INVESTIGATIVE RECOMMENDATION

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|--|---|---------------------------|--|------------------------------------|---------------------------------|
| Investigator: Alexander Lai | Team: Team # 1 | CCRB Case #: 201401450 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Saturday, 02/08/2014 2:30 AM | Location of Incident: Norman Avenue and Manhattan Avenue | Precinct: 94 | 18 Mo. SOL 8/8/2015 | EO SOL 8/8/2015 | |
| Date/Time CV Reported Sat, 02/08/2014 2:39 AM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Thu, 02/13/2014 12:22 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
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| | | |
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|-------------------------|--------|--------|---------|
| 1. SGT Victor Torres | 04025 | 924767 | PBBN TF |
| 2. POM Dennis Westbrook | 19650 | 947605 | PBBN TF |
| 3. POM Thomas Pecorella | 09542 | 947959 | PBBN TF |

| Officer(s) | Allegation | Investigator Recommendation |
|------------------------|--|-----------------------------|
| A.POM Dennis Westbrook | Abuse: PO Dennis Westbrook stopped § 87(2)(b) and § 87(2)(b) | |
| B.POM Thomas Pecorella | Abuse: PO Thomas Pecorella stopped § 87(2)(b) and § 87(2)(b) | |
| C.SGT Victor Torres | Abuse: Sgt. Victor Torres supervised the stop of § 87(2)(b) and § 87(2)(b) | |
| D.SGT Victor Torres | Abuse: Sgt. Victor Torres authorized the frisk of an individual. | |
| E.POM Dennis Westbrook | Force: PO Dennis Westbrook used physical force against § 87(2)(b) | |
| | § 87(4-b) § 87(2)(g) | |
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Case Summary

§ 87(2)(b) filed this complaint with IAB over the telephone on February 8, 2014, generating referral number 14-5111. His complaint was sent to the CCRB, where it was received on February 13, 2014.

On February 8, 2014, at approximately 2:30 a.m., § 87(2)(b) was with his co-worker, § 87(2)(b) at the intersection of Norman Avenue and Manhattan Avenue in Brooklyn, when they were approached by Sgt. Victor Torres, PO Daniel Westbrook, and PO Thomas Pecorella of Patrol Borough Brooklyn North Task Force. The following allegations resulted:

- **Allegation A – Abuse of Authority: PO Dennis Westbrook stopped § 87(2)(b) and § 87(2)(b)**
- **Allegation B – Abuse of Authority: PO Thomas Pecorella stopped § 87(2)(b) and § 87(2)(b)**
- **Allegation C – Abuse of Authority: Sgt. Victor Torres supervised the stop of § 87(2)(b) and § 87(2)(b)**

_____.

- **Allegation D – Abuse of Authority: Sgt. Victor Torres authorized the frisk of**
§ 87(2)(b) [REDACTED]
§ 87(2)(g) [REDACTED]

_____.

- **Allegation E – Force: PO Dennis Westbrook used physical force against** § 87(2)(b)
§ 87(2)(g)

_____.

- § 87(4-b), § 87(2)(g) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED] [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- § 87(4-b), § 87(2)(g) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED] [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

This case was ineligible for mediation.

Results of Investigation

Civilian Statements

Victim: § 87(2)(b)

- See encl. G2 for § 87(2)(b)'s pedigree information.

CCRB Statement

§ 87(2)(b) provided a phone statement on February 21, 2014 (encl. G1), and he was interviewed at the CCRB on February 26, 2014 (encl. G3-4). § 87(2)(g)

On February 8, 2014, at approximately 2:30 a.m., § 87(2)(b) was with his friend, § 87(2)(b) standing on the northwest corner of Norman Avenue and Manhattan Avenue, in Brooklyn. They stood outside a deli and against a wall next to a subway entrance. § 87(2)(b) wore a dark leather jacket and jeans, but he did not recall what else he wore. He was not carrying anything. He had a lighter in his front right pants pocket and a pack of cigarettes in his front left pants pocket. He had not consumed any alcohol or narcotics on this date.

§ 87(2)(b) and § 87(2)(b) just came from work at the § 87(2)(b), located on § 87(2)(b). They had walked to the deli on Manhattan Avenue, a distance of three to four blocks. They did not stop along the way, or speak with anyone. They were going to the subway station at Norman Avenue and Manhattan Avenue, in order to go home.

§ 87(2)(b) and § 87(2)(b) entered the deli and ordered bagels. While § 87(2)(b) remained inside, § 87(2)(b) went outside to smoke a cigarette. As § 87(2)(b) smoked outside the deli, his manager, § 87(2)(b) walked up to him from the same direction § 87(2)(b) had come from, accompanied by two unidentified individuals who also worked at § 87(2)(b). § 87(2)(b) greeted § 87(2)(b) with a hand shake and asked if he wanted to come with them to a bar. § 87(2)(b) declined, and § 87(2)(b) left with his companions. The hand shake with § 87(2)(b) was the only form of physical contact that § 87(2)(b) had with these individuals, and they did not exchange any items. § 87(2)(b) exited the store with the bagels and stood by § 87(2)(b) on the side of the deli by the subway entrance. § 87(2)(b) gave § 87(2)(b) one of the bagels, which they began to eat.

Less than two minutes later, a marked police van drove down Norman Avenue and stopped in front of them at the curb. Three uniformed officers, identified via investigation as PO Dennis Westbrook, PO Thomas Pecorella, and Sgt. Victor Torres of Patrol Borough Brooklyn North Task Force, exited the van. PO Westbrook was described as a dark-skinned Hispanic male who was "short" and "stocky." PO Pecorella was described as a 35-year-old white male who stood over 6'0" and had a large build and a shaved head. Sgt. Torres could only be described as a white male. § 87(2)(b) did not recall where each officer had been seated inside the vehicle.

The officers walked up to § 87(2)(b) and § 87(2)(b). PO Pecorella took out a flashlight and started looking on the floor around them, and said, "Did you drop something on the floor?" § 87(2)(b) hesitated briefly, and then denied that either he or § 87(2)(b) had dropped anything on the floor. PO Pecorella repeated the question, and kept looking around on the floor. Then PO Westbrook said, "You guys smell like weed." Sgt. Torres and PO Pecorella said, "Yeah, they're smoking weed." § 87(2)(b) stated during his interview that the area did not

smell like marijuana. During this exchange, § 87(2)(b) reached into his pocket twice to get his lighter. On each occasion, PO Pecorella said, “Get your hand out of your pockets,” and § 87(2)(b) stopped.

§ 87(2)(b) said, “Listen, I’m sorry, I just got out of work and I want to go home.” PO Westbrook approached § 87(2)(b) and said, “You look nervous.” PO Westbrook placed his hand on § 87(2)(b)’s chest. § 87(2)(b) started to push PO Westbrook’s hand off of his chest and started to ask PO Westbrook not to touch him. Before he could finish the request, PO Westbrook grabbed § 87(2)(b)’s forearm and twisted his arm behind his back. Then PO Westbrook pushed § 87(2)(b) up against a garbage dumpster one foot away. PO Westbrook pressed § 87(2)(b) against the dumpster with one hand on his twisted arm and one on his back for several seconds. § 87(2)(b) did not move his body and he repeatedly said, “I’m sorry.” PO Westbrook repeatedly said, “I’m not the kind of guy you do that with.”

§ 87(2)(b) took out his phone and started to record the incident. At that point, either PO Pecorella or Sgt. Torres said, “That’s alright you have the right to record.” Thereafter, all three officers walked back into their van. Before the van drove off, § 87(2)(b) walked over to the van and recorded the license plate number. The officers never explained to § 87(2)(b) or § 87(2)(b) why they were approached. § 87(2)(b) did not see any other civilians during the incident. § 87(2)(b)’s arm hurt for several days after the incident. He did not obtain medical treatment.

Complainant/Victim: § 87(2)(b)

- See encl. H1 for § 87(2)(b)’s pedigree information.

IAB Statement

§ 87(2)(b) provided an initial narrative with IAB over the telephone on February 8, 2014 (encl. E3), which was consistent with his CCRB statement except where noted below.

CCRB Statement

§ 87(2)(b) was interviewed at the CCRB on February 26, 2014 (encl. H2). § 87(2)(g)

On the date of the incident, § 87(2)(b) wore a black winter coat, with a flannel button down shirt under it. He had on blue jeans and boots, and carried a black backpack. § 87(2)(b) did not consume any alcohol or narcotics.

After purchasing the bagels, § 87(2)(b) exited the deli and stood with § 87(2)(b). § 87(2)(b) told him that he had just seen his boss walking by. They stood alone outside the store eating. They waited for a phone call from a friend of theirs to see if they could get a ride from him. At that time, a marked police van arrived and stopped at the curb in front of them. Three uniformed police officers, identified via investigation as Sgt. Victor Torres, PO Dennis Westbrook, and PO Thomas Pecorella of Patrol Borough North Task Force, exited and approached them.

PO Westbrook was described as a Hispanic male, stood shorter than § 87(2)(b) had a large build, and was around 35-40 years old. Sgt. Torres was described as a white male who stood 5’10” and had a large build and was approximately 35-40 years old. PO Pecorella, the driver, was described as a “tall” white male who had a large build and was approximately 35-40 years old.

PO Pecorella said to § 87(2)(b) and § 87(2)(b) “What are you guys doing?” They said, “We’re waiting for the train.” PO Pecorella said, “Where are you guys coming from?” § 87(2)(b) responded, “§ 87(2)(b).” Then PO Pecorella started picking cigarette butts up

off the ground and looking at them. § 87(2)(b) denied that either he or § 87(2)(b) had dropped anything on the ground. PO Pecorella asked § 87(2)(b) if he had been smoking marijuana, and then said to § 87(2)(b) that he had just seen him toss something on the floor. § 87(2)(b) said that he had not been smoking marijuana. § 87(2)(b) denied that the area smelled like marijuana.

After around 30 seconds, PO Westbrook grabbed § 87(2)(b)'s right arm and twisted it behind his back. § 87(2)(b) believed that PO Westbrook had gone to grab § 87(2)(b) and then § 87(2)(b) had responded and PO Westbrook twisted his arm behind his back. After turning § 87(2)(b) around, PO Westbrook placed his other hand on his back and pushed him against the nearby wall. PO Westbrook said, "I'm not the guy to fuck with."

§ 87(2)(b) said to PO Pecorella and Sgt. Torres, "I don't think you're allowed to do this," and one of them responded, "We're doing what we have to do." After that, § 87(2)(b) took out his cell phone and began to record the incident. When he did this, PO Westbrook let go of § 87(2)(b). Immediately after the officers left, § 87(2)(b) called IAB and filed a complaint about the incident.

Video Footage

§ 87(2)(b) recorded a portion of this incident with his cell phone; the video is approximately 46 seconds long (encl. I1). It first shows § 87(2)(b) standing in front of PO Westbrook, who is facing the camera. § 87(2)(b) standing behind § 87(2)(b) said, "He really does have a wife and a kid." PO Westbrook said, "Alright, you can – you can uh...you can move the camera – you can record all you want." § 87(2)(b) said, "I will record all I want. You just slammed a person against the wall." § 87(2)(b) said, "Yeah." PO Westbrook said, "Whatever." § 87(2)(b) said, "I'm going to record. It's not 'whatever.'" § 87(2)(b) said, "I'm supposed to be getting home [inaudible] like, what's going on?" § 87(2)(b) said, § 87(2)(b) they obviously don't have anything. Look, they just – he (unknown) just picked up something off the floor – he doesn't even know what it was." During these statements, the camera faced the ground or was covered by § 87(2)(b)'s hand. § 87(2)(b) then walked onto the street and recorded the back of a marked van with plate number 8673 (year 2010).

NYPD Statements:

Subject Officer: PO DENNIS WESTBROOK

- See encl.J3 for PO Westbrook's pedigree information and assignment.

Memo Book

On February 8, 2014, at 2:30 a.m., two males were stopped on the corner of Manhattan Avenue and Norman Avenue. Officers smelled marijuana coming from the area [where] the males were standing. Conducted a brief investigation and a non-crime was corrected (encl. J2).

CCRB Testimony

PO Westbrook was interviewed at the CCRB on July 9, 2014 (encl. J4-5).

On February 8, 2014, at 2:30 a.m., PO Westbrook was in a marked van with PO Pecorella and Sgt. Torres. PO Westbrook was seated in the front passenger seat, PO Pecorella was in the driver's seat, and Sgt. Torres was seated in the rear passenger seat immediately behind the driver's seat. They traveled on Norman Avenue towards Manhattan Avenue, with the driver and front passenger windows down.

PO Westbrook smelled marijuana in an unspecified part of the air. Twenty feet away, near Manhattan Avenue, PO Westbrook saw two males, identified via investigation as § 87(2)(b).

§ 87(2)(b) and § 87(2)(b) standing by a wall underneath an “Optimo Cigars” sign next to the subway station entrance. PO Westbrook described the area where § 87(2)(b) and § 87(2)(b) stood as “shaded” without much lighting. PO Pecorella and PO Westbrook said that the smell of marijuana was coming from that area. The officers stopped the vehicle to observe what § 87(2)(b) and § 87(2)(b) were doing. For the next two minutes, PO Westbrook, PO Pecorella, and Sgt. Torres remained inside the van, looking around the immediate area, such as open apartment windows, to determine if the marijuana smell emanated elsewhere. During this time, it did not appear that § 87(2)(b) or § 87(2)(b) noticed the officers. § 87(2)(b) and § 87(2)(b) were smoking a lit object and exchanging it with each other, at least once or twice. Based on PO Westbrook’s training and experience, he believed they were smoking marijuana because he smelled marijuana in the air, § 87(2)(b) and § 87(2)(b) stood in a poorly lit area, and smoked and exchanged a lit object that appeared to be marijuana. There were no other factors that led him to believe that they were smoking marijuana.

After it appeared that the marijuana smell did not emanate anywhere else but from where § 87(2)(b) and § 87(2)(b) stood, PO Westbrook, PO Pecorella, and Sgt. Torres exited the van to investigate. PO Westbrook affirmed that he knew that § 87(2)(b) and § 87(2)(b) were smoking marijuana, due to the aforementioned reasons.

When the officers exited the van, either § 87(2)(b) or § 87(2)(b) threw the object that they were smoking in an unknown direction. PO Westbrook did not know where it fell, but the smell of marijuana emanated from § 87(2)(b) and § 87(2)(b)’s hands and clothing. § 87(2)(b) stood with his back against the wall, with the stairs to the subway to his left. § 87(2)(b) stood to § 87(2)(b)’s right side. PO Westbrook stood in front of § 87(2)(b). PO Pecorella stood to PO Westbrook’s left side. Sgt. Torres stood to PO Pecorella’s left side. PO Pecorella asked § 87(2)(b) what they were doing and said that the officers observed them smoking marijuana. PO Westbrook and PO Pecorella asked § 87(2)(b) and § 87(2)(b) for their names and identifications. He did not recall whether or not Sgt. Torres spoke. § 87(2)(b) and § 87(2)(b) denied that they smoked marijuana, asked why the officers were stopping them, and refused to provide their names or their identifications. PO Westbrook said the officers did not remove § 87(2)(b) and § 87(2)(b) to a stationhouse to verify their names because officers “can’t” do that. He added that neither individual was under arrest.

§ 87(2)(b) walked towards PO Pecorella and stood within two to three feet of where his gun was holstered, which PO Westbrook viewed as a threatening action. PO Westbrook extended his right hand forward and told § 87(2)(b) “Sir, you need to stay right here.” § 87(2)(b) walked into PO Westbrook’s right forearm. § 87(2)(b) asked PO Westbrook, “Why [are] you touching me?” PO Westbrook said, “I’m not touching you. I just need you to stand back. I don’t want you walking up on my partner.” PO Westbrook never pushed § 87(2)(b) or pushed him against a wall or dumpster. He never touched § 87(2)(b). PO Westbrook was uncertain whether or not Sgt. Torres or PO Pecorella touched § 87(2)(b) or § 87(2)(b). The officers attempted to tell § 87(2)(b) and § 87(2)(b) that they detained them because of their earlier observations, but they were continually uncooperative by asking why they were being detained. PO Westbrook denied using profanity, including “fuck” or anything to the effect of, “I’m not the guy to fuck with,” towards § 87(2)(b) or § 87(2)(b). He did not hear PO Pecorella or Sgt. Torres utter those remarks. As no marijuana was found, PO Westbrook, PO Pecorella, and Sgt. Torres left. The entire interaction with the civilians lasted approximately five minutes.

Toward the end of his tour, PO Westbrook completed Stop, Question, and Frisk reports for § 87(2)(b) and § 87(2)(b). Since the civilians refused to provide their names, the names in the reports were listed as “Refused.” The reports listed them as having been suspected of

possessing marijuana. PO Westbrook did not have the numbers of the reports during the interview.

During the interview, PO Westbrook was shown § 87(2)(b)'s video recording. PO Westbrook affirmed that he was the officer in the video that said, "You can move the camera. You can record all you want." He did not recall at what point he made those statements during this incident.

Subject Officer: SGT ##### TORRES

- See encl. K3 for Sgt. Torres' pedigree information and assignment.

Memo Book

Sgt. Torres had no memo book entries regarding this incident (encl. K2).

CCRB Testimony

Sgt. Torres was interviewed at the CCRB on July 16, 2014 (encl. K4-5). § 87(2)(g)

On February 8, 2014, at approximately 2:30 a.m., Sgt. Torres was seated in the driver's seat. He did not recall where PO Pecorella or PO Westbrook was seated. Sgt. Torres did not recall if any of the van's windows were down.

Sgt. Torres recalled that either § 87(2)(b) or § 87(2)(b) wore a white tank top and dark-colored jeans. Sgt. Torres did not recall the other person's attire and he did not recall any of their physical characteristics. The area where § 87(2)(b) and § 87(2)(b) were standing was well-lit, and there was no other person in the area.

The person wearing the white tank top and jeans lifted an object to his mouth and then quickly brought his hand down upon seeing the officers' vehicle, an action Sgt. Torres interpreted as a furtive movement. Sgt. Torres initially said that he was unable to see what this person was holding, but later said that he did not recall what the object was. Sgt. Torres did not recall any other physical actions committed by § 87(2)(b) or § 87(2)(b). Sgt. Torres suspected that this person was smoking marijuana because of his movement, the smell of marijuana in the air, and because they were the only two people in the immediate area. There were no other factors that led Sgt. Torres to suspect that they were smoking marijuana and he did not believe that they were engaged in any other crime. Sgt. Torres wanted to investigate what the person was holding and whether the person was smoking marijuana or a cigarette. Neither PO Pecorella nor PO Westbrook said anything about their observations of § 87(2)(b) or § 87(2)(b) to Sgt. Torres.

After less than a minute, Sgt. Torres placed the van in park, exited, and approached § 87(2)(b) and § 87(2)(b) with PO Pecorella and PO Westbrook following. Sgt. Torres did not recall where § 87(2)(b) and § 87(2)(b)'s hands were. The smell of marijuana emanated from § 87(2)(b) and § 87(2)(b). PO Pecorella and PO Westbrook spoke with § 87(2)(b) and § 87(2)(b) but Sgt. Torres did not recall what they spoke about. He did not recall if he, PO Westbrook, or PO Pecorella asked about the whereabouts of marijuana. During the conversation, Sgt. Torres watched them and looked in the immediate area where § 87(2)(b) and § 87(2)(b) stood for evidence of marijuana. PO Pecorella or PO Westbrook also looked around the area. Sgt. Torres did not pick up anything from the ground and he did not recall if PO Pecorella or PO Westbrook did so. Nothing was recovered.

Under Sgt. Torres' instruction, PO Pecorella or PO Westbrook (Sgt. Torres did not recall which) patted the waistband of § 87(2)(b) or § 87(2)(b) for the officers' safety. They were not touched anywhere else and they were not placed against the wall. Sgt. Torres believed that both of them were frisked but he was uncertain; he affirmed that at least one of them was. Sgt. Torres

had not observed any objects or bulges on § 87(2)(b) or § 87(2)(b)'s person. When Sgt. Torres was asked if there was anything that led him to believe that there was an issue with the officers' safety, he said, "Any interaction with anybody of the general public – there's always an issue with officers' safety, because we don't know who they are and they know who we are. So as practice, it's generally good police work to pat whoever you're interacting [with] – if you're observing a crime." There were no other factors that led Sgt. Torres to believe that § 87(2)(b) or § 87(2)(b) posed a threat to their safety or that they were armed. Sgt. Torres did not recall § 87(2)(b) or § 87(2)(b)'s reaction when the frisking occurred.

Sgt. Torres did not recall if he, PO Pecorella, or PO Westbrook acquired § 87(2)(b)'s or § 87(2)(b)'s names or identifications. He did not recall if PO Westbrook or PO Pecorella used force against a civilian. He did not recall using profanity, including "fuck" or "I'm not the guy to fuck with," and he did not recall hearing an officer say such remarks. Sgt. Torres did not recall § 87(2)(b) or § 87(2)(b) removing or holding anything in their hands during this incident. The officers left after less than five minutes. Stop, Question, and Frisk reports were not completed in regards to this incident. Sgt. Torres' counsel refused to allow Sgt. Torres answer why the reports were not written.

During the interview, Sgt. Torres was shown a video recording taken by § 87(2)(b) during the incident. He did not recall the statements made by § 87(2)(b) or PO Westbrook shown in the recording. Sgt. Torres did not know what § 87(2)(b) and § 87(2)(b) were referring to when they said an officer "slammed" § 87(2)(b) against the wall.

Subject Officer: PO THOMAS PECORELLA

- See encl. L4 for PO Pecorella's pedigree and assignment.

Memo Book

PO Pecorella had no memo book entries regarding this incident (encl. L2-3).

CCRB Testimony

PO Pecorella was interviewed at the CCRB on July 23, 2014 (encl. L5). He had no recollection of this incident. He did not recall stopping, interacting, or speaking with two civilians at the location, and he did not recall seeing Sgt. Torres or PO Westbrook doing the same. He did not recall any of the allegations. PO Pecorella was shown photographs of § 87(2)(b) and § 87(2)(b) but he did not recognize them. He was also shown a video recording of this incident, but the footage did not refresh his memory.

NYPD Documents

Event Summary

An event summary was obtained and an event chronology report was not found in regards to this incident (encl. M1-2).

Stop, Question, and Frisk (UF-250) Report

A UF-250 report was not completed in regard to this incident. Copies of the computerized and handwritten UF-250 log were obtained, which confirmed that a report was not completed in regards to this incident. Additionally, the log shows that Sgt. Torres, PO Westbrook, and PO Pecorella did not complete any UF-250 report on the incident date (encl. M3-4).

Status of Civil Proceedings

- § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York as of September 16, 2014, with regard to the incident (encl. P1).

Civilians Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Civilians CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) and § 87(2)(b) (encl. D1-2).

Subject Officers CCRB History

- Sgt. Torres has been a member of the service for fifteen years and there are no substantiated CCRB allegations against him (C1).
- PO Westbrook has been a member of the service for six years and there are no substantiated CCRB allegations against him (encl. C2).
- PO Pecorella has been a member of the service for five years and there are no substantiated CCRB allegations against him (encl. C3).

Conclusion

Identification of Subject Officers

Sgt. Torres and PO Westbrook acknowledged interacting with § 87(2)(b) and § 87(2)(b) during this incident. Both officers also admitted that PO Pecorella, who did not recall this incident himself, interacted with § 87(2)(b) and § 87(2)(b) during this incident.

Investigative Findings and Recommendations

Allegations Not Pled

§ 87(2)(g)
[REDACTED]
[REDACTED]

- **Allegation A – Abuse of Authority: PO Dennis Westbrook stopped** § 87(2)(b) **and** § 87(2)(b)
- **Allegation B – Abuse of Authority: PO Thomas Pecorella stopped** § 87(2)(b) **and** § 87(2)(b)
- **Allegation C – Abuse of Authority: Sgt. Victor Torres supervised the stop of** § 87(2)(b) **and** § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) stated that they were eating bagels while the former smoked a cigarette when they were approached by PO Westbrook, PO Pecorella, and Sgt. Torres. The officers stated that they smelled like marijuana. § 87(2)(b) and § 87(2)(b) denied smoking marijuana and that they or the area smelled like marijuana.

PO Westbrook stated that while at the intersection inside his van, whose windows were down, he smelled marijuana in the air. PO Pecorella and PO Westbrook said that the smell came from where § 87(2)(b) and § 87(2)(b) stood, approximately twenty feet away. § 87(2)(b) and § 87(2)(b) smoked a lit object, exchanging it with each other at least once or twice. Based on PO Westbrook's training and experience in making narcotics arrests, he believed they were

smoking marijuana because he smelled marijuana in the air, § 87(2)(b) and § 87(2)(b) stood in a poorly-lit area, and smoked and exchanged a lit object. There were no other factors.

Sgt. Torres stated that § 87(2)(b) or § 87(2)(b) lifted an unknown object to his mouth then quickly brought his hand down upon seeing the officers' vehicle, an action Sgt. Torres interpreted as a furtive movement. Sgt. Torres suspected that this person was smoking marijuana because of this movement, the smell of marijuana in the air, and because they were the only persons in the immediate area. The smell of marijuana emanated from § 87(2)(b) and § 87(2)(b) as he approached.

PO Pecorella did not recall this incident.

According to N.Y.C. Police Department Patrol Guide § 212-11, a police officer may stop a person when he reasonably suspects that such person is committing, has committed or is about to commit a crime (encl. A1). To justify a stop, an officer must have reasonable suspicion that a crime is at hand. People v. De Bour, 40 N.Y.2d 210 (1976). (encl. A4-20).

§ 87(2)(g)

- **Allegation D – Abuse of Authority: Sgt. Victor Torres authorized the frisk of** § 87(2)(b)

Although neither § 87(2)(b) nor § 87(2)(b) alleged that they were frisked, Sgt. Torres admitted that he instructed PO Pecorella or PO Westbrook to pat the waistband of § 87(2)(b) or § 87(2)(b) for the officers' safety. Sgt. Torres did not see any objects or bulges on either civilian. There were no other factors that led Sgt. Torres to believe that § 87(2)(b) or § 87(2)(b) posed a threat to their safety or that they were armed.

An officer is authorized to frisk a person if the officer has reasonable suspicion the person is armed. People v. De Bour, 40 N.Y.2d 210, 223 (1976). (encl. A14).

§ 87(2)(g)

- **Allegation E – Force: PO Dennis Westbrook used physical force against** § 87(2)(b)

§ 87(2)(b) said that when PO Westbrook placed his hand on his chest, he pushed PO Westbrook's hand and asked not to be touched. PO Westbrook grabbed § 87(2)(b)'s forearm, twisted his arm behind his back, and pushed him up against a garbage dumpster. § 87(2)(b) stated that they were only conversing with the officers before PO Westbrook used physical force against § 87(2)(b). § 87(2)(b)'s video recording did not show the physical force alleged. § 87(2)(b) is heard accusing PO Westbrook of slamming § 87(2)(b) against a wall, to which PO Westbrook replied, "Whatever."

According to PO Westbrook, § 87(2)(b) walked towards PO Pecorella's side where his gun was holstered, which he viewed as a threatening action. PO Westbrook held his hand up and told § 87(2)(b) to stay, but he walked into PO Westbrook's forearm with his chest. PO Westbrook never pushed § 87(2)(b) or pushed him against a dumpster. Sgt. Torres did not recall seeing an officer push § 87(2)(b) and PO Pecorella did not recall this entire incident.

N.Y.C. Police Department Patrol Guide § 203-11 permits an officer to use “minimum necessary force” to overcome resistance.

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

- § 87(4-b), § 87(2)(g) [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

- § 87(4-b), § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
 Title/Signature Print Date